



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/239,873	01/29/1999	CINDIE M. LUHMAN	LL11.12-0040	6642

164 7590 09/03/2002

KINNEY & LANGE, P.A.
THE KINNEY & LANGE BUILDING
312 SOUTH THIRD STREET
MINNEAPOLIS, MN 55415-1002

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 09/03/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

239873

Applicant(s)

LUHMAN

Examiner

MEIC Leroy

Group Art Unit

16/6

20

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 6/4/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disp sition of Claims

- ☒ Claim(s) 1-53 is/are pending in the application.
- Of the above claim(s) 5-7, 12, 15-27 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-4, 8-11, 13/4 & 28-53 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-53 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Receipt is acknowledged of Response and Declaration of 6/14/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5-7, 12, 15-~~17~~ are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

The restriction was made final in the office action of 7/06/00, drawn to patentably distinct inventions requiring multiple searches. Examiner does not find the production of a feed, and the feed itself as obvious variants of methods of providing feeds to animals. Further methods of feeding a ruminant implies action, eating, on the part of the ruminant; a far cry from I.V. drip, insertion of a balling gun, or insertion through a fistula each method independent and patentably distinct from the other, and all requiring no action of the ruminant.

Claims 1, 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/338314. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record stands.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 1616

Claims 1, 8-10, 29-32, 34-37, 44-53 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained.

Applicant has not shown, or at least has not pointed, to where in the specification one can find that feeding, or otherwise supplying to the abomasums, any sugar alcohol will enhance (undefined, as far as examiner can determine) any of the parameters of milk production. More limiting forms are exemplified as claimed of the sugar at claim 9, and of the parameters as components in claim 14. As far as examiner can determine, a certain amount of speculation, subject to testing, is required—we don't know where enhancement would be achieved, as no statistical guidelines for differences, if any, from experimental to control are provided in the specification, as far as examiner can determine. Neither do we know for example, of supplying an amount unspecified in claim 1) of for instance arabinitol, would increase, for instance, true protein, to statistically significant level, at any specified stage of lactation of any specified breed of ruminant, of any age and having any previous production history. Absent more details, the herdsman of ordinary skill in the art of milking cows, is not going to be able to select an alcohol, a cow and a means of supplying the alcohol, in order to enhance some component of milk production. We do not envision the herdsman providing abnormal fistular in order to provide daily doses of sugar alcohol; neither do we see her administering via a balling gun to each of a hundred cows each day. The presumption

Art Unit: 1616

is that the cows eat the feed containing the sugar alcohol. Remond and Makinen are presented as showing that feeding sugar alcohol does in fact result in some sorbitol passing into the duo denum (2), page 4) as fermentability of sorbitol is relatively weak (in the rumen). Therefore, we see a distinction between the prior art administration of, at least, sorbitol, and the instant invention but the means of achieving it, are not evident when the claims are given their broadest possible interpretation. Note the Remond, as is instantly claimed, fed 50 g/day of sorbitol (page 2).

Makinen also shows polyols, xlitol, sorbitol (page 1079, polyol mixture) not completely fermented in Rumen when fed. (page 1077). One component enhanced was milk enzyme activities (page 1082). So, claim 1, a method of enhancing milk component by providing a feed to the abomasums, is met by feeding sugar alcohols, shown to result in some enhancing effects on milk component production. As claimed, the instant invention is seen as requiring testing within the provence of a ruminologist or one of skill in ruminant nutrition in the arena of experimental techniques for instance a PhD animal scientist.

Claims 1-3, 9-11, 13, 28, 33, 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Merensalmi 4127676.

The rejection of record is maintained.

Claims 1, 8-10, 13, 14, 29-32, 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Khalili et al '97.

The rejection of record is maintained,

Claims 1, 9, 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Remond et al '86.

The rejection of record is maintained.

Claims 1, 9, 10, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Makinen et al '81.

The rejection of record is maintained.

Claims 1-4, 9-11, 13, 28, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al 5219596.

The rejection of record is maintained.

Applicant's arguments filed 6/14/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered and the examiner's position remains—as the claim is read, one of ordinary skill in the field of milk production would see the claim, 1, as feeding in the normally understood sense, of either dishing out measured feed sniffs to individual cows, or putting feed stuffs where cows (or other ruminants) can get it in any case, the cow to take the feed into her mouth and the process of eating resulting in some of the sugar alcohol, mixed in the feed, reaching the abomasums. As to the prior art rejections, contrary to applicant's contentions, we find some sugar alcohols when fed, result in some enhancement of some milk production components; so the instant invention as it is claimed, is met.

The Porter declaration is seen as, in essence a condemnation of the transference of in vitro to in vivo conclusions, as, in particular, addressing a US patent to Merensalmi. We are silent except to note that Merensalmi fed cows sugar alcohol

Art Unit: 1616

and observed enhancement of milk production components. Thus, the instant claims, absent sufficient means to support the claims as distinguishable from the prior art, are not seen as patentably distinct over the prior art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy:mv
August 20, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

NEIL S. LEVY
PRIMARY EXAMINER